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No. 97

In the Supreme Court of the United States

OCTOBER TERM, 1932

JACK GEBARDI AND LOUISE ROLFE GEBARDI,
PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The finding of the District Court that both of the petitioners were guilty of each of the offenses charged in the indictment appears at R. 14. The majority and dissenting opinions in the Circuit Court of Appeals (R. 177–185) are reported in 57 F. (2d) 617.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 2, 1932. (R. 186.) A petition for rehearing was denied May 3, 1932. (R. 188.)

The petition for certiorari was filed May 23, 1932. The writ was granted by this Court May 31, 1932. (R. 193.) Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether proof that a woman agreed to her transportation in interstate commerce for an immoral purpose (i. e., unlawful sexual intercourse with the man transporting her) was legally sufficient to establish the crime of conspiring with the one who transported her to commit the substantive offense of transportation.

2. Whether the evidence showed but one conspiracy instead of three, as charged in the indictment.

3. Whether the evidence showed an intent to transport for an immoral purpose, as alleged in each count of the indictment.

STATUTES INVOLVED

Section 37 of the Criminal Code, c. 321, 35 Stat. 1088, 1096 (U. S. C., Title 18, Sec. 88), provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

Section 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825 (U. S. C., Title 18, Sec. 398), otherwise known as the White Slave Traffic Act or the Mann Act, provides:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony,

and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

An indictment in three counts was returned against petitioners, hereinafter called the defendants, in the United States District Court for the Northern District of Illinois. (R. 3–6.) Each count charged the defendants, a man and a woman, with conspiring together and with others to the grand jurors unknown, to transport the woman defendant from one State to another over one or more railroad common carriers to the grand jurors unknown, for an immoral purpose, to wit, for the purpose of the defendants having unlawful sexual intercourse, they not then and there being husband and wife.[1] The termini of the transportation which was the object of each conspiracy were stated as follows: First count, Chicago, Ill., to Miami, Fla.; second count, Gulfport, Miss., to

[1] The indictment was returned on November 1, 1929. (R. 3.) A written stipulation entered into at the trial (R. 16) shows that at that time and at the time of the commission of the offenses charged in the indictment defendant Gebardi was married to one Helen C. Demory; that defendant Rolfe was a divorced woman; that Gebardi was divorced on May 2, 1931; and that Gebardi and Louise Rolfe were married on the next day, about three weeks before the trial of the instant case commenced. (R. 17.) It was also agreed that Louise Rolfe at the time of the trial was twenty-five years of age. (R. 16.)

Chicago, Ill.; third count, Chicago, Ill., to Jacksonville, Fla. Each count charged several overt acts, which consisted, among other things, of the traveling of the defendants together by railroad through the territorial jurisdiction of the trial court.

Defendants pleaded not guilty (R. 7), and the case was tried by the District Court without a jury, waivers consented to by the United States Attorney having theretofore been filed (R. 8–9). The District Court found both defendants guilty upon each count of the indictment (R. 14), saying:

> There was no commercial purpose involved in the transportation charged, but such purpose is not a material element of the crime forbidden by the Mann act. *Caminetti* v. *U. S.*, 242 U. S. 470. There was no direct evidence of sexual intercourse, but the undisputed circumstances carry to the court absolute conviction that the transportation proved had such intercourse for its purpose and that defendants conspired as charged.
>
> After a careful consideration of the evidence submitted and of the briefs and arguments of counsel I am convinced beyond any doubt that defendants are guilty and that no defense of any character exists.

Gebardi was sentenced to two years' imprisonment upon each count, the sentences to run consecutively, but it was directed that the sentences upon the second and third counts should be suspended

at the expiration of the sentence on the first count, and that the defendant should be placed on probation for a period of five years. Louise Rolfe was given a general sentence of four months in jail. (R. 15.) Upon appeal the convictions were affirmed, one judge dissenting. (R. 177–186.)

SUMMARY OF ARGUMENT

I

United States v. *Holte,* 236 U. S. 140, establishes that where a woman voluntarily consents or agrees to her transportation in interstate commerce for purposes forbidden by the White Slave Traffic Act, she may be charged with conspiring with the one transporting her to violate that Act. The Court said in that case that there was no reason "for not treating the preliminary agreement" of the parties "as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim." It follows that the conspiracy is established where there is proof of " the preliminary agreement of the parties." Both courts below found that there was proof of agreement between the defendants in the instant case that the defendant Rolfe should be transported in interstate commerce for an immoral purpose, to wit, the having of unlawful sexual intercourse between the defendants.

The *Holte* case is not distinguishable on the ground that the indictment there involved charged the man and woman with conspiring that he should transport her for purposes of prostitution instead

of for the purpose of sexual intercourse between the defendants, as in the instant case. The White Slave Traffic Act, it was held in *Caminetti* v. *United States,* 242 U. S. 470, was intended to reach not only "commercialized vice" but transportation as well for an immoral purpose not accompanied by expectation of pecuniary gain.

The doctrine of *concursus necessarius* does not apply in the instant case. Agreement or concurrence of the parties was not necessary to the commission of the substantive offense; hence that agreement or concurrence may be made the basis of a charge of conspiracy.

II

There is no merit in the defendants' contention that the evidence discloses merely one conspiracy instead of three, as charged in the indictment. The court below was fully justified under the evidence, which is reviewed at length at pp. 12–22, *infra,* in finding that each trip undertaken by the defendants was a distinct and separate enterprise, and that the two later trips were not contemplated when the first trip began.

III

Exhibits 80, 84, 85, and 86, as well as the evidence generally, conclusively support the finding of the courts below that the primary object of the defendants' travels was sexual intercourse, and that the defendants' immoral relations were not casual incidents of journeys undertaken for other purposes.

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ARGUMENT

I

THE DEFENDANTS' AGREEMENT THAT THE DEFENDANT ROLFE SHOULD BE TRANSPORTED BY HER CODEFENDANT FOR AN IMMORAL PURPOSE CONSTITUTED CONSPIRACY TO VIOLATE THE WHITE SLAVE TRAFFIC ACT

The defendants do not deny that the elements of conspiracy were properly charged in each count of the indictment. But they say that even if, as charged in the indictment, the proof shows that the woman voluntarily consented or agreed that she should be transported in interstate commerce for an immoral purpose—in the instant case the having of unlawful sexual intercourse with the man transporting her—the proof does not establish a conspiracy to commit an offense against the United States.[2] They attempt to distinguish *United States* v. *Holte,* 236 U. S. 140, which we regard as controlling.

In the *Holte* case the indictment charged the defendant, a woman, with conspiring with one Laudenschleger that the latter should cause her to be transported from one State to another for the purpose of prostitution, contrary to the White Slave Traffic Act. The District Court sustained a demurrer on the ground that as the woman was the victim of the

[2] We do not mean to infer that the proof in the instant case showed nothing more than that the woman consented to her transportation. The evidence, which is reviewed at length on pages 12–22, *infra*, shows active cooperation by the woman in the furtherance of the defendants' immoral undertakings.

transportation she could neither violate the statute nor conspire with another to violate it. (See Record *Holte* case, No. 628, October Term, 1914, p. 6.) To review this ruling the case was brought to this Court under the Criminal Appeals Act. Of course, this Court was not required to consider what was necessary to constitute the substantive offense under the White Slave Traffic Act, or to determine what evidence would be required to convict a woman under an indictment like the one before it. Conceding, inferentially, that the woman transported could not commit the substantive offense, it was pointed out that one may be guilty of a conspiracy to bring about that which he is himself free to do, and authorities were cited, among them several decisions holding that a woman may conspire to commit an abortion upon herself, even though under the law she could not commit the substantive crime or be held as an accomplice. Repudiating the assumption of the District Court that the woman must always be the victim of a violation of the White Slave Traffic Act, the Court held that her concurrence was not necessary to the offense, and concluded that there was no reason for saying that she could not conspire with another to cause her own transportation in violation of the Act. The Court was plainly of the opinion that there is no reason "for not treating the preliminary agreement" of the parties "as a conspiracy that the law can reach, if we abandon the illusion that the woman always is the victim." See also *Corbett* v. *United States*, 299 Fed. 27, 29–30 (C. C. A. 9th).

Each case must, therefore, depend upon proof of "the preliminary agreement" of the parties. The defendants do not contend that Louise Rolfe was an unwilling victim and the proof fully sustains the finding that there was a preliminary agreement or conspiracy, as the court below held after reviewing the evidence in support of the finding of the District judge who heard the evidence.

The defendants attempt to distinguish the *Holte* case on the ground that in that case the indictment charged the man and the woman with conspiring that he should transport her for purposes of prostitution, which implies, of course, general promiscuity of intercourse, whereas the instant indictment merely charged that the transportation was for the purpose of sexual intercourse between the man and the woman. We fail to see how this constitutes a valid distinction between the two cases. It is settled that the White Slave Traffic Act was intended to reach not only "commercialized vice" but applies as well to transportation for an immoral purpose which is not accompanied by expectation of pecuniary gain. *Caminetti* v. *United States,* 242 U. S. 470.

The doctrine of *concursus necessarius,* upon which the defendants rely, does not apply in the instant case. Proof of agreement between the parties would have been wholly unnecessary to sustain a prosecution for commission of the substantive offense. As was said in the *Holte* case, p. 145, "The substantive offence might be committed with-

out the woman's consent, for instance, if she were drugged or taken by force." But where the parties confederate and agree that the White Slave Traffic Act should be violated, something is added beyond a mere violation of that statute. It is this added element of agreement or confederation which supplies the basis for a charge of conspiracy, and brings the case within the ordinary rule that a conspiracy constitutes a different offense from that which is the object of the conspiracy. *United States* v. *Rabinowich*, 238 U. S. 78. The distinction between such a case and those cited by the defendants is that the crimes considered in those cases (agreeing to receive a bribe, etc.), could not be consummated in the absence of agreement or concurrence of the parties, which thus became an essential part of the offense and precluded a charge of conspiracy. Here agreement or concurrence is not essential to the commission of the substantive offense, and consequently, as was said in the *Holte* case (p. 145), "the decisions that it is impossible to turn the concurrence necessary to effect certain crimes such as bigamy or dueling into a conspiracy to commit them do not apply."

II

THERE WAS SUBSTANTIAL EVIDENCE THAT THERE WERE THREE CONSPIRACIES, AS CHARGED IN THE INDICTMENT

It is next contended by the defendants that the evidence did not show three conspiracies, as charged in the indictment, and that the Govern-

ment has attempted to divide and redivide what was essentially one conspiracy.[3] We do not believe that the evidence supports this contention and submit that there was substantial evidence warranting the trial judge in finding that the three conspiracies charged in the indictment were established.

The first count of the indictment alleges that the defendants conspired on December 18, 1928, to transport the defendant Rolfe from Chicago to Miami for the purpose of their having unlawful sexual intercourse. Gebardi at that time was a married man and Louise Rolfe a divorced woman. (R. 16.) The evidence tends to show that Gebardi lived with his wife and their child, who was from five to seven years old, at the McCormick Hotel in Chicago, under the name of Johnson, from January 18, 1928, until March 28, 1928, when there was a shooting affray in the smoke shop of the hotel build-

[3] How this question was raised in the trial court does not specifically appear from the record. The grounds for the motions made by the defendants for a directed verdict are not stated. (R. 10, 118.) However, as the court below considered the question, we have discussed it here.

So far as Gebardi is concerned, the question has a practical bearing only in its relation to the probationary portion of his sentence. While the defendants were convicted on each of the three counts of the indictment, Gebardi was sentenced to imprisonment for two years only (*supra*, pp. 5-6), which is not more than the maximum which may be imposed for a single conspiracy. Gebardi would still be in the position of having to serve the prison portion of his sentence even if his contention were sound. As Louise Rolfe was sentenced to only four months in jail, the question is academic so far as she is concerned.

ing, in which, apparently, Gebardi was wounded. (R. 21–22, 29, 46–48; Exhibits 47–51, R. 99–100.) While there is no evidence indicating where the Gebardis resided from then until December, 1928, when the defendants started on their trip to Miami, there is nothing in the record to show that the Gebardis had separated. On September 13, 1928, Louise Rolfe was registered at the Lexington Hotel in Chicago under the name of George McManus, and the key to the room assigned to her was given to Gebardi (R. 24; Exs. 1, 3–7, R. 85–87), but the evidence shows that Gebardi did not live at the hotel during 1928 and that Louise Rolfe occupied the room alone until December 22, 1928 (R. 18, 21). On that date she checked out of the hotel, and, according to statements made by her and the defendant Gebardi in February, 1929, to certain Chicago police officials, the defendants left for Miami, Florida. (R. 112–114.)

On December 25, 1928, according to the evidence, the defendants appeared at the Dallas Park Hotel in Miami. Louise Rolfe was shown an apartment in the hotel but would not take it until, as she said, she had spoken to her "husband," who was outside in the car. After she had communicated with him, Gebardi registered the two defendants under the name of "Mr. and Mrs. Jack McGurn." (R. 38; Ex. 40, R. 97.) The defendant Gebardi, as the record shows repeatedly, was generally known in Chicago by the name of "Jack McGurn." (R. 18, 47, 113, 114.) The defendants remained at the

Dallas Park until December 31st. Louise Rolfe paid the hotel bills. (R. 38.) They then moved into a private house in Miami, where they stayed about three weeks. (R. 22, 23.) On January 5, 1929, while living at this house, Louise Rolfe was arrested for speeding. She gave her name as "Louise McGurn," stated that she was married, that her occupation was that of "housewife," and that her residence was the private house in which she and Gebardi were living. When booked she used the telephone and shortly thereafter Gebardi, understood by the officer to be named "Jack McGurn," appeared. The next morning, when the case was called, Gebardi was present and when the defendant Rolfe was fined, "got up from his chair" and paid the fine. (R. 22–23, 25–26.) Thus the arrival in Miami, and the illegal cohabitation there completed the first confederation between these defendants. Their future movements would require a new initiative.

We thereafter find the defendants back in Chicago where, on January 24, 1929, they were registered by the defendant Rolfe at the LaSalle Hotel not under the name they had employed on their trip to Florida but under the name "Mr. and Mrs. Vincent D'Oro, Havana, Cuba." (R. 27, 37, 39, 40; Exs. 13–14, 34, R. 88, 95.) Thus the return to Chicago ended the Florida adventure with the parties back in Chicago where their habitat was.

Reverting to the indictment, and passing the second count, it was alleged in the *third* count that the defendants conspired on the next day, January 25,

1929, that Louise Rolfe should be transported from Chicago to Jacksonville for the same immoral purpose alleged in the first count. And the evidence shows that on the day mentioned defendants left the LaSalle (R. 39), their baggage being checked on three one-way tickets to Jacksonville on the Seminole Limited train of the Illinois Central. The Pullman tickets showed a reservation of a compartment and a lower berth. The defendants were accompanied on this trip by Gebardi's brother Tony. The reports of the Pullman conductor establish that the compartment was occupied by two passengers and the lower berth by one passenger. (R. 27–28, 29, 30–32, 32–34, 35, 42–44, 45, 49–50, 55, 67–68, 111–112; Exs. 15–28, R. 89–94; Ex. 33, R. 95; Exs. 42–44, R. 97–98; Exs. 63–65, R. 103–104.)

The defendants reached Jacksonville, their ticket destination, about 7.10 on the morning of January 27, 1929. (R. 30.) Thus again they consummated their second adventure, newly planned, since otherwise the return to Chicago from the previous Florida trip, would have been as inexplicable as it would have been unnecessary. They stayed in Jacksonville only about an hour (R. 111), when their baggage was checked to St. Augustine over the Florida East Coast Line (R. 44–45, 82–83; Ex. 92, R. 115). The defendants remained in St. Augustine about four hours (R. 111), when their baggage was rechecked on passenger tickets for Biloxi, Miss., via Jacksonville. It arrived at Jacksonville about seven P. M. on the same day the defendants left

there and was delivered by the Seaboard Air Line to the Louisville & Nashville at River Junction, Florida, at five A. M. on January 28, 1929. It reached Biloxi about four o'clock that afternoon and was transferred to the Edgewater Gulf Hotel at Edgewater Park, Miss. (R. 52–54, 58–59, 82, 84–85; Exs. 56–62, R. 101–103; Exs. 73–74, R. 106; Exs. 93–94, R. 115; Ex. A, R. 118.) The fact that after arriving at Jacksonville, the journey was extended to St. Augustine and thence eventually to Biloxi, does not contradict the Government's contention that the second trip itself was a newly planned expedition, distinct in origin from the first Florida trip.

As on the first trip to Florida, Gebardi himself attended to the matter of registration at the Edgewater Gulf Hotel. Cohabitation being the pur pose, he registered Louise Rolfe and himself as "Mr. and Mrs. Vincent D'Oro, Congress Hotel, Chicago," and his brother Tony as "Mr. Anthony D'Oro," of the same address. The registration cards indicate *that the duration of the visit was to be two weeks.* (R. 66–67; Exs. 78–79, R. 107.) No return from Biloxi was in evidence; a prolonged stay was evidently contemplated. The party was assigned a double room and a single room at rates somewhere near the maximum. As Gebardi did not have a reservation, the room clerk reported the matter to the management. (R. 66–67.)

It also appears that some time during the late afternoon of the day they arrived the party sent

some clothing down to the valet department of the hotel for pressing. No names appeared on the tags accompanying the clothes, but the porter noticed that one of the suits bore the label "J. McGurn." When he took the clothes back to Gebardi's room, after having made a check upon the name at the cashier's desk, he asked Gebardi to whom the clothes should be charged, and Gebardi replied, "D'Oro." The porter reported the incident to the management. (R. 63–64.) That evening Gebardi was requested to see the manager of the hotel. At this interview credit references were insisted upon. These references not being satisfactory, Gebardi was requested to make a cash deposit of three or four hundred dollars. He immediately pulled out a roll of bills but was told to make the deposit with the cashier, which he later did. During the course of the interview Gebardi stated that he had been a salesman connected with some "ice cream company" or "biscuit company," but that "he was not then working"; that Louise Rolfe was his wife; and that the length of their stay would depend upon how he liked the place, "possibly two or three weeks." (R. 63, 65–66, 70–72.) The next day the manager of the hotel received information from various organizations in reference to Gebardi's credit and left word for Gebardi to see him again. Gebardi did not do so, but instead left with his party shortly after breakfast the next morning, January 30th, thus remaining at the hotel a little less than two days instead of the two or three weeks

he had planned. (R. 71.) This sudden change of plan clearly gave rise to the agreement to leave Biloxi for some new destination. This brings us logically to the second count of the indictment, which alleges that defendants conspired to transport Louise Rolfe from Gulfport, Miss., to Chicago for the same immoral purpose alleged in the other two counts. (R. 4–5.) It is true that this count charges that the conspiracy was entered into January 25, 1929, in the Eastern Division of the Southern District of Illinois. But the date was alleged under a *videlicit,* and it is well settled that it is immaterial where a conspiracy is entered into so long as some one of the overt acts takes place in the district of trial. *Hyde* v. *United States,* 225 U. S. 347, 366–367; *Brown* v. *Elliott,* 225 U. S. 392; *United States* v. *Linton,* 223 Fed. 677 (W. D. Wash).

The third overt act alleged in the count was that the defendants traveled together through the district of trial on a railroad car bound from the State of Mississippi. As we shall see, that overt act was clearly proved.

The evidence shows that the same date that Gebardi was requested a second time to see the manager of the Edgewater Gulf Hotel he arranged with the head porter of the hotel for the purchase of three tickets and sleeping accommodations to Chicago and for the checking of the party's baggage. (R. 57–58, 59–62; Exs. 71–72, R. 105.) The ticket agent of the Illinois Central at Gulfport

assigned the parties three seats from Gulfport to Jackson, Miss., which is the junction point of the main line from New Orleans to Chicago, and also reserved for the party a drawing room upon the Panama Limited from Jackson. (R. 56–57; Ex. 45–46, R. 98; Exs. 66–68, 70, R. 104–105.) The train bearing the Gebardi party left Gulfport at noon on January 30th. It reached Memphis, Tenn., at 9 o'clock that night, when one of the members of the party was transferred from the drawing-room to a lower berth. (R. 69–70; Ex. 45, R. 98; Exs. 81, 83, R. 108.) The Panama Limited arrived at Chicago at 9.30 on the morning of January 31st. (R. 69.)

Again immediate cohabitation was sought. The baggage of the defendants was taken to the Stevens Hotel. (R. 34–36, 41, 81–82, 83–84; Exs. 29–32, R. 94–95; Ex. 41, R. 97; Ex. 95, R. 115.) Gebardi did not attend to the registering on this occasion. That was taken care of by Louise Rolfe, who registered the defendants as "Mr. and Mrs. J. Vincent D'Oro, of Havana, Cuba." The first room assigned was not suitable, and the defendants were soon given a better room. (R. 37, 51–52, 68–69; Ex. 34, R. 95; Exs. 54–55, R. 100.) The defendants occupied this room until February 27, 1929. (R. 46; Exs. 35–39, R. 95–97.) The bills were paid by Louise Rolfe. (R. 50–51.)

During the month that they were at the Stevens Hotel the defendants left their room only occasionally. They stayed in the room, according to Louise

Rolfe's statement to the Chicago police, "just about 24 hours a day." Their meals were usually served in their room; they had no visitors, and went to see only a few shows. (R. 111–112.) This was verified by Gebardi in a like statement, in which he said that "I haven't been out of my room for any purpose whatever, not even to go out and buy a package of cigarettes." (R. 114.) On February 27, 1929, the defendant's room was searched by a party of Chicago police. They found Louise Rolfe attired in a dressing gown and slippers, while Gebardi had on a pair of house slippers, trousers, and a dressing robe (R. 74–79). During the search of the room the officers picked up Government's Exhibits 80, 84, 85, and 86. (R. 78, 108, 109–110.) According to a hand-writing expert, Exhibits 80 and 85 were written by Louise Rolfe (R. 81; Ex. 34, R. 95; R. 37), while Exhibits 84 and 86 were written by Gebardi (R. 81; Ex. 40, R. 97; R. 38; Ex. 77, R. 107; R. 71). It is evident from the addresses appearing on these exhibits that they were written while the defendants were away from Chicago on their various journeys (R. 22, 23, 29, 43). They indicate the dominant and immoral purpose of the defendants' travels.

As a result of the search by the Chicago police officers, a prosecution for fornication appears to have been instituted against Gebardi in a municipal court in Chicago. (R. 74.) Just what the result of this prosecution was the record does not show.

The defendants appear to have left the Stevens Hotel just after their room was searched on February 27, 1929, and we hear no more of them until May 2, 1929, when it appears that they registered in the Lexington Hotel in Chicago as "Louis Nolan and wife," and that they remained there until September, 1929. (R. 18, 20, 24–25; Ex. 2, R. 86; Exs. 8–12, R. 87–88.)

Neither of the defendants took the stand, nor did they offer any evidence to rebut the Government's testimony.

The evidence was carefully scrutinized in the court below. Considered in the light of the reasonable inferences to be drawn therefrom, we submit that it fully justified the following statement made by that court in its opinion (R. 180):

> The court was amply justified in finding, we think, that when the parties left Chicago for Miami on the 18th of December they did not contemplate a trip on January 25th from Chicago to Jacksonville, Florida. This second trip was separate and distinct from the first one and was undertaken pursuant to plans perfected by appellants after the first plan had been carried out in whole or in part. Nor is there any evidence from which the court might have found that the conspiracy included not only the said trips on the two different dates from Chicago to Miami and from Chicago to Jacksonville, a month apart, but that said appellants should go from Gulfport to Chicago. The trips were entirely separate; the actions of Gebardi in securing the transportation were separate

and disassociated one from the other, and we see no escape from the finding that the three trips were separate and the conspiracies preceding them were separate and distinct one from the other.

Of course, as the court below observed (R. 180), the function of an appellate court is merely to ascertain whether there was substantial evidence to support the finding of the trial court, not itself to make a finding of fact. *Caminetti* v. *United States*, 242 U. S. 470, 495–496, *supra*.

III

THERE WAS SUBSTANTIAL EVIDENCE THAT THE TRANSPORTATION WAS FOR AN IMMORAL PURPOSE

Finally, it is contended that the evidence shows that illicit relations had existed between the defendants prior to the trips in question for a period ranging from three to seven years and that therefore it can not be inferred that the transportation was for an immoral purpose. The defendants base this contention upon statements given by Gebardi and Louise Rolfe to the Chicago police officers when their room in the Stevens Hotel was searched. (R. 113, 114.)

In these statements the defendants not only claimed that they had been living together for the period stated, but indicated they had been married that long. But these assertions were untrue, as is shown by the stipulation of agreed facts introduced at the trial (R. 16) showing that Gebardi and Rolfe were not married until May 3, 1931, which was shortly before the trial and two years after the

commission of the offenses in question, and also by the evidence hereinbefore referred to (*supra*, pp. 12–13), which indicates that not only were Gebardi and Louise Rolfe *not* living together prior to the time they started on their first trip to the South, but that Gebardi had been living with his lawful wife and child.

Exhibits 80, 84, 85, and 86 (R. 108–109), as well as the evidence generally, conclusively support the finding of the courts below that the primary object of the defendants' travels was sexual intercourse. The defendants' immoral relations were not casual incidents of journeys undertaken for other purposes. Thus the decisions recited in defendants' brief (pp. 14–16) are not in point.

CONCLUSION

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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